

JAN 05 2011

SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

<p>IN THE MATTER OF THE APPLICATION OF WESTWATER FARMS, LLC FOR ADMINISTRATIVE APPROVAL OF THE HARLEY DOME 1 SWD WELL LOCATED IN SECTION 10, TOWNSHIP 19 SOUTH, RANGE 25 EAST, S.L.M., GRAND COUNTY, UTAH, AS A CLASS II INJECTION WELL</p>	<p>))))))))))</p>	<p>RESPONSE TO OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</p> <p>Docket No. 2010-029 Cause No. UIC-358.1</p>
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WESTWATER FARMS, LLC, by and through its undersigned attorneys,
hereby files its Response to Objections to Proposed Findings of Fact, Conclusions of Law
and Order filed by Living Rivers on January 3, 2011.

LIVING RIVERS' OBJECTIONS WERE FILED UNTIMELY.

Pursuant to Utah Administrative Code ("U.A.C.") Rule R641-109-100,
Westwater Farms, LLC ("**Westwater**") filed its proposed Findings of Fact, Conclusions of
Law, and Order (the "**Proposed Order**") on December 21, 2010, and served Living Rivers
("**LR**") with the Proposed Order on the same day. LR filed and served its Objections to
Proposed Findings of Fact, Conclusions of Law and Order ("**Objections**") thirteen days
later, on January 3, 2011. LR filed and served its Objections untimely. Under Rule R641-
109-100, LR was to file and serve its Objections within five days of service of the Proposed
Order. ("Notice of objections thereto will be submitted to the Board and all parties of record
within five days after service." U.A.C. Rule R641-109-100.) Under the Rules of Practice

and Procedure Before the Board of Oil, Gas and Mining (the “**Board**”), LR had until December 29, 2010 to file and serve its Objections because the period to respond to the Proposed Order was less than seven days. (“When the period of time prescribed or allowed is less than seven days, intervening Saturdays, Sundays, or legal holidays will be excluded in the computation [of time].” U.A.C. Rule R641-105-800.)

Rather than comply with the Board’s rules, LR took thirteen days to file its Objections instead of the permitted eight days—which is still longer than the standard five days normally allowed under the rules. The Board should disregard LR’s Objections because LR has failed to abide by the Board’s rules. The Board’s rules govern all proceedings before the Board. In fairness to the Board and the parties of record, LR should not be allowed to ignore the Board’s Rules of Practice and Procedure.

**THE OBJECTIONS ARE UNNECESSARY OR
INCONSISTENT WITH THE RECORD.**

Westwater responds to each of LR’s enumerated objections to the proposed findings of fact and conclusions of law as follows:

Objections to the Proposed Findings of Fact

1. LR proposes modifying Paragraph 3. LR’s proposed modification is unnecessary. The Bureau of Land Management’s (“**BLM**”) letter dated September 30, 2010, which was entered into the record as part of Exhibit 5, already states that the BLM decided to withdraw its protest after meeting with Westwater and its consultants. The Proposed Order is accurate and properly reflects the record.

2. LR’s objection to a factual statement in Paragraph 10 ignores the administrative record. The Division of Oil, Gas and Mining’s (“**Division**”) well files show that the Harley Dome #1 Well (the “**Subject Well**”) was permitted by the Division as an

injection well and that it was completed as an injection well. LR's objection is unwarranted and inconsistent with the administrative record.

3. LR's proposed modification to Paragraph 12 is inconsistent with the record. The disposition and final location of the produced water injected into the Subject Well is known. In fact, such matters were the principal focus of the hearing. LR's proposed modification is not supported by the record.

4. LR's proposed change to Paragraph 14 is not warranted. The finding states that "[t]he Kayenta is approximately 199 feet thick in the vicinity of the Subject Well" The exact thickness for the Kayenta Formation obviously comes from the logs run in the Subject Well. The "approximate" language applies to possible variations in the thickness of the formation away from the borehole in the vicinity of the Subject Well. LR's suggested modification adds nothing.

5. LR's proposed modification to Paragraph 17, subsection (iii) is unnecessary. The terms "the proposed injection well and pressures" in the Proposed Order are described in detail in Paragraph 21. However, there does appear to be a typographical error in the proposed finding in Paragraph 21. In that paragraph, the phrase "approximately 6,000 barrels" should be "approximately 6,500 barrels." The Proposed Order should be corrected in this regard.

6. LR's proposed change to Paragraph 23 is not necessary and is inconsistent with the record. Westwater's evidence regarding the generation of H₂S gas was not limited to the Wellington, Colorado operations.

7. LR's proposed change to Paragraph 24 is inconsistent with the record and is merely an attempt to have the Board reconsider its decision.

8. LR's proposed new Paragraph 25 is not necessary and is not supported by the record and is merely an attempt to have the Board reconsider its decision.

Objections to Conclusions of Law

1. LR's objection to Paragraph 5 ignores the record. The evidence presented at the hearing showed that the Kayenta Formation acts as an impermeable barrier between the Wingate and Entrada Formations, which will protect the Helium deposit in the Entrada Formation. The BLM agreed, as shown by its letter dated September 30, 2010. ("Through the course of this communication, [Westwater] has provided sufficient evidence that the reservoir conditions in this instance are not favorable for hydrogen sulfide generation, and that operational controls will be applied to further minimize the possibility of reservoir souring. Additionally, [Westwater] has provided electric log data and comparative water analysis data which indicates the Kayenta Formation, locally, is a suitable confining layer to isolate the Entrada Sandstone helium reservoir above, from the proposed Wingate Sandstone injection zone below.") LR's objection should be disregarded.

2. LR's concerns regarding the statement in Paragraph 5 that "Westwater has . . . satisfied all legal requirements for granting Westwater's Request for Agency Action" with respect to a determination of the ownership of the produced water to be injected are unwarranted. Westwater's Request for Agency Action did not ask the Board to make such a determination regarding the ownership of the produced water. The Board's proceeding would not be the proper forum for such a determination to be made, and no rule or statute governing the Board's UIC proceedings requires that such a determination be made. The Board ruled on the requested injection well and injection operations, matters within the board's exclusive jurisdiction. The Board did not rule on the ownership of the

water to be injected, a matter outside the Board's jurisdiction. LR's misplaced objection should be disregarded.

3. LR's concerns regarding whether the public interest has been met also are misplaced. Westwater's evidence showed that approving the Subject Well as a Class II injection well for the disposal of produced water will allow oil and gas operations in several producing basins to continue. Water disposal availability can be a limitation on such operations. Allowing such disposal into the Subject Well will prevent the waste caused by shutting-in such operations and will protect correlative rights. As the Utah Legislature has recognized, preventing waste and protecting correlative rights is in the public interest. Utah Code Ann. § 40-6-1.

**THE REMAINDER OF LR'S OBJECTIONS ARE
PREMATURE ARGUMENTS FOR RECONSIDERATION OF
THE BOARD'S DECISION.**

The remainder of LR's Objections, including its Overview and suggested changes to the Order section of the Proposed Order, are not objections to the form of the Proposed Order. They are arguments, statements, and requests that seek the Board to reconsider its decision approving Westwater's Request for Agency Action. LR's remaining objections are premature and out of order. LR will have an opportunity to seek reconsideration of the Board's final order as provided under the Board's rules and the Utah Administrative Procedures Act after the Board's final order is issued. Accordingly, the Board should disregard LR's remaining objections.

Westwater has presented its evidence. LR has had ample opportunity to participate in the Board's proceeding and to present its own evidence and question Westwater's evidence. The Board carefully considered Westwater's proposed injection well

and injection operations. The Board carefully considered LR's objections and proposals for monitoring. After deliberating, the Board found that Westwater had met its burdens of proof and persuasion and approved Westwater's Request for Agency Action. The Proposed Order accurately and fairly reflects the Board's proceeding. LR's untimely Objections fail to show that the Proposed Order is inaccurate or unfair. For these and the other reasons stated above, the Board should disregard Living Rivers' Objections to the Proposed Findings of Fact, Conclusions of Law and Order and issue its final order in this Cause.

Dated this 5th day of January, 2011.

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By 

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2011, I caused a true and correct copy of the foregoing Response to Objections to Proposed Findings of Fact, Conclusions of Law and Order to be served via email and U.S. Mail, properly addressed with postage prepaid, upon each of the following:

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A handwritten signature in blue ink, appearing to be "James F. Alder", written over a horizontal line.